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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/605,577

10/09/2003

Muhammed Majeed

2576

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EXAMINER

MERCIER, MELISSA S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

07/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/605,577	Applicant(s) MAJEED ET AL.	
	Examiner MELISSA S. MERCIER	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 18-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

Receipt of Applicants Amended Claims and Remarks filed on March 26, 2008 is acknowledged. Claims 14 and 18-19 remain pending in this application.

Claim Objections

Claim 19 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 18. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). The only difference between the two claims is the intended function of the composition. **Applicant is reminded that the intended function/future use of the claimed composition does not hold patentable weight.**

Claims 18-19 both further limit the composition to include a pharmaceutically acceptable carrier; however the intended function (i.e. to treat or prevent exacerbation of bacterial infections associated with acne, boils and pimples versus to inhibit the growth of staphylococci and propionibacteria on the skin surface) are not given patentable weight. It appears applicant is attempting to incorporate method claims into the application. The claims as written are directed toward a composition. If Applicant would like to pursue method claims, he is invited to file a divisional application. Since Applicant has already received an action on the merits of this case, any method claims presented at this time will be withdrawn from consideration.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 14 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaguchi et al. (US Patent 5,972,357).

Yamaguchi teaches health foods and cosmetics containing polyisoprenylated benzophenone derivatives.” The derivatives may be prepared by any method such as the chemical synthetic method or the extraction of the polyisoprenylated benzophenone derivatives from the plant containing them. The preferred derivatives includes, for example, well known substances such as Garcinol also known as Camboginol, isogarcinol also known as Cambogin, xanthochymol, and guttiferone” (column 3, lines 14-24). Yamaguchi further teaches, “the plants containing the polyisoprenylated benzophenone derivatives described are some kind of tropical plants belonging to the Guttiferae family, for example Garcinia cambogia, Garcinia indica, and Garcinia purpurea” (column 3, lines 28-33).

Yamaguchi’s example 1 is drawn to a healthy drink with extracts. The example teaches “ In the same manner as in Referential Example 1, the hydroxycitric acid extracted residue of the dry rind of the Garcinia indica was extracted with ethanol to give an extract containing 25% w/w of garcinol and 5% w/w of isogarcinol” (column 12, lines 56-61). The Referential Example 1 can be found in Column 6, lines 4-44.

Yamaguchi also teaches “the derivatives are effective ingredients and have a variety of functions for maintaining health such as anti-ulcer activity, the Maillard reaction inhibiting activity, anti-oxidation activity, reactive oxygen species scavenging activity and anti-tumor promotion activity” (abstract). The derivatives are also expected to have “prophylactic effects on various geriatric diseases, stress diseases, diabetic diseases, tumorigenesis and the aging of skin, such as hardening, wrinkling, and pigmentation” (column 2, lines 45-55).

Yamaguchi does not disclose a composition comprising 3% Garcinol and 2% Cambogin.

Applicant is reminded that where the general conditions of the claims are met, burden is shifted to applicant to provide a patentable distinction. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Aller*, 220 F.2d 454 105 USPQ 233,235 (CCPA 1955).

Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various cosmetic compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. See *In re Russell*, 439 F.2d 1228 169 USPQ 426(CCPA 1971).

Claims 14 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Majeed et al (PCT Publication WO 2002/14477, now US Patent 7,063,861).

Art Unit: 1615

Majeed teaches a composition comprising hydroxycitric acid (HCA) in combination with either one or both of Garcinol and antrocyenin. Garcinol is described as having well know anti-oxidant effects, an aid to weight loss, chemopreventive properties, inhibition of cytoplasmic citrate lysase. Majeed additionally teaches a method for extracting Garcinol by “extracting Garcinia spent fruit from suspension with toluene and 5% methanol to obtain a paste having 20% PPB’s (Garcinol-15%; Cambogin 5%” (column 6, lines 14-19). In additional steps outlines, Majeed further teaches the purification of the Cambogin and Garcinol to increase the percentage of each present in the composition.

Majeed does not disclose a composition comprising 3% Garcinol and 2% Cambogin.

Applicant is reminded that where the general conditions of the claims are met, burden is shifted to applicant to provide a patentable distinction. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Aller*, 220 F.2d 454 105 USPQ 233,235 (CCPA 1955).

Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various cosmetic compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. See *In re Russell*, 439 F.2d 1228 169 USPQ 426(CCPA 1971).

Response to Arguments

Applicant's remarks have been fully considered but are not deemed to be persuasive. As was discussed above, the instant claims are drawn to a composition, not a method of treatment. The intended use or future function of the composition does not hold patentable weight. Based on the rejections above, the composition has been deemed to be obvious to a person of ordinary skill in the art at the time of the invention. It is further noted that the prior art discloses the compositions as suitable for use as a cosmetic composition. A cosmetic composition would include compositions for topical application. There does not appear to be any indication in the prior art of the compositions not being capable for use topically. It also appears applicant is implying a criticality to the percentages of Garcinol and Cambogin, however, there is no evidence presented as to the criticality. Applicant is invited to provide evidence as to such.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 1615

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/
Examiner, Art Unit 1615

/MP WOODWARD/
Supervisory Patent Examiner, Art Unit 1615